

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SCOTT KINGSTON,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendant.

NO. 2:19-CV-01488-MJP

**ORDER ON LCR 37 JOINT
SUBMISSION REGARDING
PLAINTIFF'S INTERROGATORY
NO. 4, PLAINTIFF'S REQUEST FOR
PRODUCTION NOS. 12 & 21, AND
DEFENDANT'S PRIVILEGE LOG**

THIS MATTER came before the Court on the parties' Joint LCR 37(a) Submission Regarding Plaintiff's Interrogatory No. 4, Request for Production Nos. 12 & 21, and Defendant's Privilege Log. Dkt. No. 31. Having considered the joint submission, the supporting declaration(s) and exhibits, and the records herein, the Court hereby orders IBM to complete its production as follows:

Interrogatory No. 4. The Court hereby orders IBM to produce all non-privileged information related to the company's decision to terminate Andre Temidis and Mike Lee. In light of his claim that these two employees were terminated for the same reasons he alleges that he was terminated (and IBM's denial of that allegation), Plaintiff is entitled to explore Defendant's documentation regarding the termination of Temidis and Lee for evidence of pretext, as well as to explore whether IBM had a practice of retaliating against whistleblowers.

Request for Production No. 12. The Court orders IBM to produce all non-privileged documents related to the company's claim that it was not obligated to pay "K" any commission on the HCL sale. Plaintiff is entitled to explore whether there was a pattern of discrimination at IBM as relevant to his allegation that he was fired for pretextual reasons.

1 **Request for Production No. 21.** The Court orders IBM to produce all non-privileged
2 documents that evidence, refer, or related to efforts made by “J” and Nick Donato to
3 secure the SAS Sale and the HCL Sales. The emails from Mr. Donato are relevant to
4 Plaintiff’s claim that IBM discriminated against “J,” and Plaintiff is entitled to them in
5 light of Defendant’s argument that it did not discriminate against “J.”

6 **Privilege Log.** The Court orders IBM to produce for *in camera* review all documents
7 for which protections are claimed in Defendant’s privilege log as “work product” or
8 “attorney-client privilege,” along with any foundation necessary to claim the
9 privilege. The documents must be delivered to chambers by no later than **July 24,**
10 **2020.**

11 The Court will reserve its ruling on the privilege log until it has had a chance to
12 complete the *in camera* review.

13 Dated this _14th_ day of _July_, 2020.

14 

15
16 Marsha J. Pechman
17 United States Senior District Judge
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I, Toby J. Marshall, hereby certify that on September 20, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Barry Alan Johnsrud, WSBA #21952
Email: barry.johnsrud@jacksonlewis.com
JACKSON LEWIS P.C.
520 Pike Street, Suite 2300
Seattle, Washington 98101
Telephone: (206) 405-0404
Facsimile: (206) 405-4450

Justin R. Barnes, *Admitted Pro Hac Vice*
Email: justin.barnes@jacksonlewis.com
Kelli N. Church, *Admitted Pro Hac Vice*
Email: kelli.church@jacksonlewis.com
JACKSON LEWIS P.C.
171 17th Street, NW, Suite 1200
Atlanta, Georgia 30363
Telephone: (404) 525-8200

Attorneys for Defendant

DATED this 14th day of July, 2020.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Toby J. Marshall, WSBA #32726
Toby J. Marshall, WSBA #32726
Email: tmarshall@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Attorneys for Plaintiff